

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-1292

**United States Court of Appeals
For the Second Circuit**

UNITED STATES OF AMERICA,

Appellee,

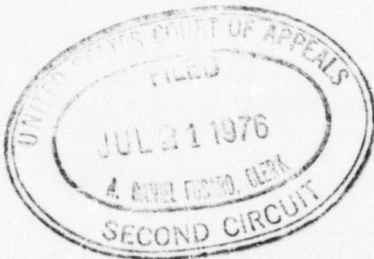
v.

JOHN GIANGRANDE,

Defendant-Appellant.

*On Appeal From The United States District
Court For The Eastern District Of New York*

APPELLANT'S APPENDIX



DAVID E. OLTARSH
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John Giangrande*

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DOCKET ENTRIES

U.S. vs. 75 CR 90 7-3		Case Filed Yr. 75 No. 1 of 3 Defendants	Yr. 75 No. 1 of 3 Defendants
JUDGE/MAGISTRATE 0721 Assigned Trial District Office 207 Disp./Sentence		BRAMWELL, J. MAGN. CASE NO. 75M1478	
CHARGES 21:841 U.S. CODE SECTION Did distribute and possess with intent to distribute cocaine hydrochloride		COUNTS 2	
U.S. Attorney for E.D.N.Y. Stanley Greenidge		Defendant, C.D. <input checked="" type="checkbox"/> Waived, L. Set, L. None, L. Other, L. PD, L. GB David Oltarsh 225 Broadway, NYC. 233-8270	
ARREST 8/28/75 U.S. Custody Began on Above Charges		TRIAL Trial Set For 12/1/75 Trial Begun <input type="checkbox"/> Trial Ended <input type="checkbox"/> Disposition: <input type="checkbox"/> Convicted, <input type="checkbox"/> Acquitted, <input type="checkbox"/> Dismissed, <input type="checkbox"/> Nolo Prosequi	
INDICTMENT Information <input type="checkbox"/> 12/1/75 Waived <input type="checkbox"/> Superseding Indict/Info <input type="checkbox"/>		SENTENCE Disposition: <input type="checkbox"/> On All Charges, <input type="checkbox"/> On Lesser Offense(s), <input type="checkbox"/> WOP, <input type="checkbox"/> WY, <input type="checkbox"/> Nolo/Discontinued	
Search Warrant: Issued <input type="checkbox"/> Return <input type="checkbox"/> Summons: Issued <input type="checkbox"/> Served <input type="checkbox"/> Arrest Warrant: <input type="checkbox"/>		OUTCOME Dismissed <input type="checkbox"/> Held for District CJ <input type="checkbox"/> Held to Answer to U.S. District Court <input checked="" type="checkbox"/> AT: E.D.N.Y. Magistrate's Initials:	
COMPLAINT: 8/28/75 MS-070B OFFENSE (in Complaint): Violation of T-21, U.S.C. Sec. 841		BOND: <input type="checkbox"/> Exonerated, <input type="checkbox"/> To Transfer District	
Show last names and suffix numbers of other defendants on same indictment/information			
LOUIS JAMES DE SALVATORE-1, ANTHONY FAGO-2			
12/1/75	Before JUDD, J. - Indictment filed		
12/11/75	Before BRAMWELL, J. - Case called - Deft and counsel present - Deft waives reading of indictment and each enters a plea of not guilty - Bail cont'd - Case adjd to 2/2/76 for Status Report		
2-2-76	Before BRAMWELL, J. - Case called for status report & adj'd to 2-11-76 at 10 AM for further report.		
2-11-76	Before Bramwell, J - case called - deft & atty present - adjd to 2-23-76 for trial.		
2/11/76	Notice of readiness for trial filed		
2-23-75	Consent to waive speedy trial filed.		
2/23/76	Before BRAMWELL, J. - Case called - deft and counsel present case adjd to 2/24/76 at 10:00 A.M.		
3-24-76	Before BRAMWELL, J - case called - deft & counsel present case adjd to May 5, 1976 for trial on consent.		
5-5-76	Notice of appearance filed.		
5-5-76	Before BRAMWELL, J - case called - deft & counsel present - John Corbett is relieved as counsel for the deft - case adjd to May 24, 1976 for trial.		
5/10/76	Voucher for compensation of counsel filed		

DATE	IV. PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
5-14-76	Notice of motion filed for Inspection of Grand Jury Minutes, to dismiss the Indictment on behalf of deft John Giangrande, for severance, suppress evidence, and Memorandum in support of motions etc. filed. (ret. May 21, 1976)				
5/19/76	Deft's voir dire filed				
5/21/76	Before BRAMWELL, J. - Case called- motion to inspect grand jury minutes argued- motion denied-settle order on copy received-motion to dismiss adjd to 5/28/76				
5/24/76	Before BRAMWELL, J. - Case called- adjd to 6/7/76 at 10:00 A.M. for trial on consent				
5-28-76	Before BRAMWELL, J. - Case called. Motion to dismiss indictment argued. Decision reserved.				
6/1/76	Govt's bill of particulars filed				
6/1/76	By BRAMWELL, J. - Order filed that motion to inspect to dismiss, to suppress, for bill of particulars granted, denied and decision reserved as indicated on order				
6/3/76	Govt's memorandum in response to above motion filed				
6-7-76	Before BRAMWELL, J - case called - deft & atty present- Case marked ready and passed to follow 76 CR-182				
6-15-76	Govts Trial Brief filed				
6-16-76	Before BRAMWELL, J - case called - deft present - counsel present - hearing on admission of tapes begun and contd to June 17, 1976 -defts motion to suppress tapes etc. denied-				
6-17-76	Before BRAMWELL, J - case called - deft & counsel present - hearing contd - court deems that the tapes are audible after consideration by the Court. Govt is permitted to introduce prior criminal acts - case adjd to June 21, 1976 at 11 am.				
6-21-76	Before BRAMWELL, J - case called - deft & counsel present - trial ordered and begun - Jurors selected and sworn - trial contd to 6-22-76				
6-22-76	Before BRAMWELL, J - case called - deft & counsel present - trial resumed - trial contd to June 23, 1976				
6-23-76	Before BRAMWELL, J - case called - deft & counsel present - trial resumed - Court declares a Mistrial - defts motions to dismiss the indictment under the provisions of double jeopardy etc. motions denied; Jury discharged - case adjd to July 6, 1976 for trial.				
6-25-76	3 stenographers transcripts filed (dated June 17, June 22 and June 23, 1976 respectively)				
6-28-76	Notice of appeal filed				
6-28-76	Docket entries and duplicate of notice mailed to the court of appeals				
6-28-76	Before BRAMWELL, J - Order filed denying defts application for a stay of the July 6, 1976 trial date etc. Application for stay etc. filed.				
6-28-76	Before BRAMWELL, J - case called - defts application for a stay of trial application is denied - Order denied signed.				

(a) (b) (c) (d)
Interval Start Date End Date Ltr. Total
(per Section II) Contd. Day

INDICTMENT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

75 Cr 907

----- x

UNITED STATES OF AMERICA

-v-

INDICTMENT

LOUIS JAMES DE SALVATORE, a/k/a
Louis Pizza, ANTHONY FAGO, JOHN
GIANGRANDE, a/k/a Cheech,

21 U.S.C. §§ 841, 846
18 U.S.C. § 2

DEFENDANTS

U.S. Dist. Ct.
Eastern Dist. N.Y.
Filed - Dec. 1, 1975

----- x

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 12th day of December, 1974, in the Eastern District of New York, LOUIS JAMES DE SALVATORE, a/k/a Louis Pizza and ANTHONY FAGO, the defendants herein, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately one eighth kilogram of cocaine hydrochloride.

[Title 21, United States Code, Section 812, 841 (a)(1)
and 841 (b)(1)(A)]

COUNT TWO

On or about the 8th day of January, 1975, in the Eastern District of New York, LOUIS JAMES DE SALVATORE, a/k/a Louis Pizza, the defendant herein, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately ninety-nine grams of heroin hydrochloride.

[Title 21, United States Code, Sections 812, 841 (a)(1)
and 841 (b)(1)(A)]

COUNT THREE

On or about the 19th day of February, 1975, in the Eastern District of New York, LOUIS JAMES DE SALVATORE, a/k/a Louis Pizza, and JOHN GIANGRANDE, a/k/a Cheech, the defendants herein, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately 496 grams of heroin hydrochloride.

[Title 21, United States Code, Sections 812, 841 (a)(1)
and 841 (b)(1)(A)]

COUNT FOUR

On or about the 18th day of March, 1975, in the Eastern District of New York, GEORGE JOHN ADAMO, now deceased, and LOUIS JAMES DE SALVATORE, a/k/a Louis Pizza, the defendant herein, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately forty-five grams of heroin hydrochloride.

[Title 21, United States Code, Sections 812, 841 (a)(1),
and 841 (b)(1)(A)]

COUNT FIVE

On or about the 20th day of March, 1975, in the Eastern District of New York, GEORGE JOHN ADAMO, now deceased, and LOUIS JAMES DE SALVATORE, a/k/a Louis Pizza, the defendant herein, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately seventy-five grams of heroin hydrochloride.

[Title 21, United States Code, Sections 812, 841 (a)(1),
and 841 (b)(1)(A)]

COUNT SIX

On or about the 24th day of March, 1975, in the Eastern District of New York, LOUIS JAMES DE SALVATORE, a/k/a Louis Pizza, the defendant herein, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately twenty-eight grams of heroin hydrochloride.

[Title 21, United States Code, Sections 812, 841 (a)(1), and 841 (b)(1)(A)]

COUNT SEVEN

On or about and between the 1st day of December, 1974, and the date of this indictment, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants, LOUIS JAMES DE SALVATORE, a/k/a Louis Pizza, ANTHONY FAGO, JOHN GIANGRANDE, a/k/a Cheech, and GEORGE JOHN ADAMO, now deceased, agreed together and with each other and with others to the Grand Jury unknown, to violate Sections 812, 841 (a)(1) and 841 (b)(1)(A) of Title 21, United States Code.

1) It was a part of said conspiracy that the said defendants unlawfully, wilfully and knowingly would distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, heroin, the exact amount thereof being to the Grand Jury unknown, in violation of Sections 812, 841 (a)(1) and 841 (b)(1)(A) of Title 21, United States Code.

2) It was further a part of said conspiracy that the said defendants unlawfully, wilfully and knowingly would distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance,

to wit, cocaine, the exact amount thereof being to the Grand Jury unknown, in violation of Sections 812, 841 (a)(1) and 841 (b)(1)(A) of Title 21, United States Code.

OVERT ACTS

In pursuance of said conspiracy and to effect the objects thereof, the following overt acts were committed in the Eastern District of New York and elsewhere.

1. On or about December 12, 1974, the defendant LOUIS JAMES DE SALVATORE, a/k/a Louis Pizza, met with co-conspirator ANTHONY FAGO at the Drift Inn Lounge, 1969 Coney Island Avenue, Brooklyn, New York.

2. On or about December 12, 1974, the defendant LOUIS JAMES DE SALVATORE, a/k/a Louis Pizza, distributed one-eighth kilogram of cocaine at the Drift Inn Lounge, 1969 Coney Island Avenue, Brooklyn, New York.

3. On or about February 19, 1975, the defendant LOUIS JAMES DE SALVATORE, a/k/a Louis Pizza, met with co-conspirator JOHN GIANGRANDE, a/k/a Cheech, in the Eastern District of New York.

4. On or about February 19, 1975, the defendant JOHN GIANGRANDE, a/k/a Cheech, distributed approximately 496 grams of heroin hydrochloride at the Dolly Ross Luncheonette, 855 4th Avenue, Brooklyn, New York.

5. On or about March 15, 1975, the defendant LOUIS JAMES DE SALVATORE, a/k/a Louis Pizza, met with GEORGE ADAMO, a co-conspirator, now deceased, at the Drift Inn Lounge, 1969 Coney Island Avenue, Brooklyn, New York.

6. On or about March 15, 1975, GEORGE ADAMO, now deceased, dis-

tributed approximately thirty-one grams of heroin in the Eastern District of New York.

[Title 21, United States Code, Sections 812, 841 (a)(1)
841 (b)(1)(A) and 846]

A TRUE BILL

/s/

FORELADY

/s/

DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

BILL OF PARTICULARS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA

75 CR 907

-v-

JOHN GIANGRANDE

DEFENDANT

-----X

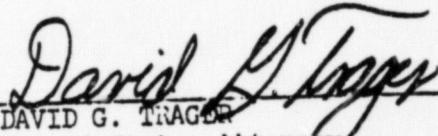
BILL OF PARTICULARS

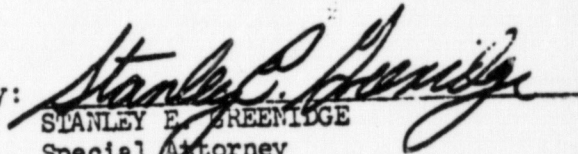
Now comes the Government and pursuant to the order of this Court supplies the following Bill of Particulars in the above-captioned case.

1. John Giangrande, joined the conspiracy on or about February 18, 1975.
2. He was involved in the conspiracy at both the Drift Inn, Coney Island Avenue, Brooklyn, New York, and the Dolly Ross Luncheonette, 855 4th Avenue, Brooklyn, New York.
3. The defendant conspired with George Adamo and Louis De Salvatore.

Dated: Brooklyn, New York
June 1, 1976

Respectfully submitted,


DAVID G. TRAGER
United States Attorney
Eastern District of New York

By: 
STANLEY E. GREENIDGE
Special Attorney
U.S. Department of Justice

COURT'S ACCEPTANCE OF DEFENDANT DE SALVATORE'S
PLEA OF GUILTY

15

1
2 THE COURT: ...Having been advised as to your
3 constitutional rights, the nature of the charges against
4 you, the consequences of your plea, how do plead to
5 Count 7 of the indictment?

6 DEFENDANT DESALVATORE: Guilty.

7 THE COURT: Anything further, Mr. Greenidge?

8 MR. GREENIDGE: Nothing further.

9 THE COURT: All right. The Courts finds there
10 is a factual basis for the plea and accepts the plea
11 of guilty to Count 7 of the indictment.

12 On Bail, bail continued.

13 MR. GREENIDGE: Bail continued. There is no
14 opposition.

15 (continued next page)

COURT'S SEVERANCE OF DEFENDANT LOUIS JAMES DE SALVATORE

1 THE COURT: Definitely. Definitely. 26

2 That's just as to what the evidence is. Not as to
3 your -- not as to the participation of your client
4 as to how it may have come about and into the Govern-
5 ment's hands in any fashion.

6 MR. OLTARSH: Right.

7 THE COURT: You are not conceding anything of
8 that nature.

9 MR. OLTARSH: Right.

10 THE COURT: All right we can proceed.

11 MR. GREENIDGE: We can proceed.

12 THE COURT: All right bring in the jury.

13 (Whereupon the jury entered the courtroom.)

14 THE COURT: Good Afternoon, Ladies and Gentle-
15 men. I wish to apologize for having gotten you into
16 Court late, but there were some legal matters that I
17 had to take up with the lawyers and they each took
18 some time.

19 Now the first thing I must tell you is that
20 the case of Louis James DeSalvatore has been severed.
21 It has been severed. He is no longer on trial in this
22 case.

23 Now, as a result of that, no member of the jury
24 is to draw any presumption or any inference as to the
25 fact that his case was severed and it is no longer

COURT'S PRELIMINARY INSTRUCTIONS TO THE JURY

27

1
2 before this jury for any consideration.

3 I will now give you some preliminary instructions.

4 Now, this case will proceed in the following
5 order.

6 The Government will make an opening statement
7 outlining its case. Then the Defendant may make an
8 opening statement outlining his case. But the Defen-
9 dant is not required to make an opening statement.

10 The opening statements are not evidence, but
11 are merely to aid you in generally understanding the
12 nature of the case, the significance of evidence when
13 it is introduced.

14 After the opening statements or opening state-
15 ment of the Government, if only the Government opens,
16 the Government will introduce evidence. The conclusion
17 of the Government's evidence, the Defendant has the
18 right to introduce evidence. However, he need not do
19 so. Rebuttal evidence may be introduced.

20 At the conclusion of all the evidence, the
21 attorneys may make their closing arguments to you.

22 Faithful performance by you of your duties
23 is vital to the administration of justice. The law
24 applicable to this case will be contained in the
25 instructions I give you during the course of the

1 trial, and it is your duty to follow all such instruc-
2 tions.
3

4 It is your duty to determine the facts and to
5 determine that from the evidence and the reasonable
6 inferences arising from such evidence, and in so doing
7 you must not indulge in guesswork or speculation.

8 The evidence which you are to consider consists
9 of the testimony of witnesses and the exhibits admitted
10 in evidence.

11 The term "witness" means anyone who testifies
12 in person or by deposition, including the defendant.
13 The admission of evidence in court is governed by
14 rules of law. From time to time it may be the duty
15 of the attorneys to make objections and my duty as
16 judge to rule on those objections and whether you can
17 consider certain evidence. You must not concern your-
18 self with the objections or the reasons for these
19 rulings. You must not consider testimony or exhibits
20 to which an objection was sustained or which has been
21 ordered stricken.

22 Opening statements and closing arguments of
23 the attorneys are intended to help you understand the
24 evidence and applying the law, but they are not evidence.

25 You must not be influenced in any degree by any

1
2 personal feeling of sympathy for, or prejudice against,
3 the Government or any of the defendants in this case,
4 for each is entitled to the same fair and impartial
5 consideration.

6 No statement or ruling or remark which I may
7 make during the presentation of testimony is intended
8 to indicate my opinion as to what the facts are.
9 You are to determine the facts. In this determination,
10 you alone must decide upon the believability of the
11 evidence and its weight and value. In considering the
12 weight and value of the testimony of any witness you
13 make take into consideration the appearance, attitude
14 and behavior of the witness, the interest of the
15 witness in the outcome of the case, the relation of
16 the witness to the Government or any of the defendants,
17 the inclination of a witness to speak truthfully or
18 not, the probability or improbability of the witness'
19 statements, and all other facts and circumstances in
20 evidence. Thus, you may give the testimony of any
21 witness just such weight and value as you may believe
22 the testimony of such witness is entitled to receive.

23 Until the case is submitted to you for your
24 deliberation, you must not discuss this case with
25 anyone or remain within hearing of anyone discussing it.

1
2 Neither should you read any newspaper article, listen
3 to any radio broadcast, nor view any television program
4 which discusses the case. After this case has been
5 submitted to you, you must discuss this case only in
6 the jury room when all members of the jury are present.
7 You are to keep an open mind and you must not decide
8 any issue in this case until the case is submitted to
9 you for your deliberation under the instructions of the
10 Court.

11 (continued next page)
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GOVERNMENT'S OPENING STATEMENT

31

1 THE COURT: (Continuing.) We will now have the
2 Opening Statement of the prosecutor.

3 You may proceed, Mr. Greenidge.

4 OPENING STATEMENT BY MR. GREENIDGE:

5 MR. GREENIDGE: May it please the Court;

6 Fellow counsel, defendants;

7 Ladies and gentlemen of the jury:

8 We were introduced yesterday, my name is
9 Stanley Greenidge, I am a Special Assistant United
10 States Attorney for the Eastern District of New York.

11 As you have been told by the Court, it is now
12 my duty to give to you an opening statement in this
13 case.

14 Now my opening statement is merely a statement
15 of what the Government expects to prove and what it
16 expects its evidence will show, and that is all it is.
17 It isn't anything that has to be considered as evidence
18 by you.

19 My opening statement coming as it does at the
20 beginning of the trial sort of serves as an outline or
21 a guide to the evidence as it proceeds from that
22 witness chair up there, and that witness chair and the
23 evidence produced from that witness chair and the
24 evidence introduced at the trial are the only items you
25 are to consider in this case.

Mr. Greenidge-opening

2 1
2
3 Now I will not preface each remark with, The
4 evidence will show that, or, The Government expects
5 its evidence will show thus and such, it is just to
6 recall to your minds that this is, What the Government
7 expects to prove, and I will not preface each
8 statement with that statement but I want you to keep
9 in mind that what I will say here today is what I
10 expect the Government's evidence will show.

11 Now you have already heard the reading of the
12 indictment, Judge Bramwell read it to you yesterday,
13 but as it was read to you you should know that on
14 December 1, 1975 a true bill of indictment was returned
15 as against Mr. Antohny Fago and Mr. John Giangrande
16 charging them with violating the federal law, and the
17 facts alleged in that indictment essentially is what
18 the Government must prove in its case. Now those
19 facts are those that were read to you as the
20 indictment, the true bill of indictment yesterday by
21 the Court.

22 We will present evidence to you that we think
23 will prove, we believe will prove the facts or the
24 statements alleged in that indictment.

25 Now the evidence against the defendants
revolves around the tesimony of one witness, and that

Mr. Greenidge-opening

is Robert Pincus.

Robert Pincus at the end of this trial will divulge practically every nook and cranny of his life to you; you will know more about Robert Pincus than I know or that anybody else in this Courtroom now knows.

You also will know that Robert Pincus is a person who is self-indulgent, a person who lives for the moment, so to speak, a person who is and was at one time a spoiled person. He is a person who enrolled in college and quit because of the easy life and the easy money that graft could bring him. He is a person as you will find out who would be a dealer in narcotics.

Robert Pincus is a 35 year old resident of Brooklyn, New York, who during his lifetime has done a lot of things, a lot of things you will find were the other side of the law. But there is one thing you will find out that Robert Pincus did, and that is that he did deal in drugs and that he did buy drugs and that one of the persons he trafficked in drugs with was a person named Louis DeSalvatore.

Now the offense outlined in the indictment has to do with the sale of narcotics, a conspiracy to sell

1
2 and distribute narcotics, in this case cocaine and
3 heroin.

4 Now the indictment as it charges the offense
5 begins the conspiracy in December of 1974. The
6 Government's proof will show that the conspiracy
7 actually began in 1974 but the association, the
8 criminal association of Mr. Pincus to Mr. DeSalvatore
9 began in 1972.

10 The acts that will be outlined by Mr. Pincus
11 could generally be called dealing in narcotics or
12 narcotic trafficking. It has to do with pushing drugs,
13 and we believe the evidence will show that Mr. Pincus
14 at this time was a middle level drug pusher putting
15 drugs to dealers who dealt in the streets, but that
16 the real movers, the prime movers of these drugs
17 happen to be Mr. DeSalvatore and Mr. Fago and
18 Mr. Giangrande, Mr. Fago and Mr. Giangrande being
19 seated right now at defense table.

20 It came about this way:

21 In 1972 Mr. Pincus wanted to get into drugs,
22 wanted to deal in drugs, and he approached some friends
23 to help him get into the drug business. The friends
24 introduced him to Mr. DeSalvatore. Mr. DeSalvatore
25 at that time was in his business at the Drift Inn at

Mr. Greenidge-opening

1969 Coney Island Avenue, operating as a bar owner.

Mr. Pincus was brought to the bar by friends, a Mr. James Fabbraio and also a man by the name of Silverman and he was introduced at that time to Mr. Louis James DeSalvatore.

Mr. DeSalvatore spoke to Mr. Pincus and indicated to Mr. Pincus that he would like to sell drugs to him. Mr. Pincus said he would like to move drugs, but that he was inexperienced in the drug business and that if Mr. DeSalvatore would help him out he would seek to sell the narcotics .

A sale was set up, it was set up for the next day. At that time Mr. DeSalvatore told Mr. Pincus that he was to pick up the drugs in a van, an abandoned van in the Amoco gas station directly across the street from the Drift In. Mr. Pincus was told that there was fear in the bar because they felt the place was under surveillance and that Mr. Pincus would not come to the bar to pick up the drugs but go to the van instead.

Mr. Pincus the next day when he went to pick up the drugs instead sent a man by the name of John Turner, Jr. to pick up the drugs and he picked up two ounces of heroin from the bumper of the van.

6 1
2 He dealt with the heroin on the street and he
3 made some money.

4 Now the price at that time for the heroin was
5 \$500 per ounce. It was not good heroin but was cut
6 many times. It was of a street quality so Mr. Pincus
7 could not make that much money on it. But during
8 the first sale he managed to double the money he had
9 expended and made a thousand dollars on that sale.

10 Pretty soon he became pretty familiar with
11 Mr. DeSalvatore and Mr. Fabbraio and he also was
12 introduced to another man by the name of James Castro
13 or Jimmy Cass.

14 (Continued next page.)
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Greenidge-opening

37

1
alvatore
2/2
/mh

2 You will hear him so called from the stand.

3 Now Jimmy Cass was to deal the drugs to Mr.
4 Pincus and then Mr. Pincus would then deal to his
5 dealers on the streets.

6 Jimmy Cass was introduced to Mr. Pincus by
7 Mr. DeSalvatore some four nights after that first meet-
8 ing. They were so impressed, Mr. DeSalvatore told Mr.
9 Pincus he was so impressed by the way he moved the
10 drugs he was going to give him some more narcotics,
11 another two ounces sale.

12 Mr. Pincus at that time, four nites later,
13 complained about the amount that he was to pay for the
14 drugs, \$500 per ounce. Mr. DeSalvatore agreed that on
15 future sales that price would now be \$450 an ounce,
16 knocking off \$50 from the price.

17 Mr. Pincus dealt the drugs at that time to
18 people in the street, John Turner, Jr. being one of
19 them, and others whom he dealt with on the street were
20 in particular people who used narcotics on the street.

21 Now pretty soon the supply of heroin went dead,
22 went dry, and they had to get some more heroin or some
23 other drugs to distribute. Mr. Pincus was then intro-
24 duced to other people, a man by the name of Cirillo,
25 who supplied him with drugs so that he could distribute

Greenidge-opening

them.

Mr. DeSalvatore did the honors of the introducing of Mr. Pincus to Mr. Cirillo.

Mr. DeSalvatore kept in constant contact with Mr. Pincus and for some time Mr. Pincus, as you will see, kept going down to the bar to be introduced to other people who could help him out with narcotics.

During this time Mr. Pincus built up his rapport with certain people in the drug ring, this time Mr. DeSalvatore, Mr. Fago, and Mr. Giangrande, as you will also find out, and because of that he was trusted with more and more amounts of narcotics -- not in any one sale but the sales became more frequent. The price still remained \$450 an ounce.

Mr. Pincus graduated I would say probably in March of that year to sales of cocaine, and at that time his trust was really at a peak in the narcotics ring.

The frequency of the contacts continued and waned a little bit when the drugs became a little scarce, but it continued on a weekly basis.

There came a time in March of 1974 when Mr. DeSalvatore became a little bit reluctant to deal with anybody, and Mr. Pincus became a prime suspect

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as to whether or not he had divulged any of Mr. DeSalvatore's drug deal secrets to any other person in authority. At that time Mr. Pincus was called down to a parking lot in Brooklyn and he was driven there by a man by the name of Howard Silverman. Mr. Pincus was then left in the car and Mr. DeSalvatore came up to the car and introduced himself and other people there by their first names only to Mr. Pincus. At that time he was told of the problems Mr. DeSalvatore was experiencing at the time and that he would least like to know whether or not Mr. Pincus was the source of his problems.

At that time Mr. DeSalvatore requested Mr. Pincus to lift up his shirt exposing his body to Mr. DeSalvatore to determine at that time whether or not he was wired.

Mr. Pincus did so.

Mr. Pincus also indicated that he was not the source of the problem, that if there was any source it happened to be someone else in his organization.

That caused some strained relationships between Mr. DeSalvatore and Mr. Pincus, and as you will find after this Mr. Pincus became dissatisfied with his life as a narcotics pusher and then turned to the

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Government for assistance and help.

He indicated to the government agents that he knew a man by the name of Louie Pizza; he only knew Mr. DeSalvatore up to this point as Louie Pizza, that he had gone to Mr. DeSalvatore and was introduced to Mr. DeSalvatore as Robert Pincus but Mr. DeSalvatore only introduced himself to him as Louis Pizza.

When he went to the agent in May of 1974 he indicated to the agent that he knew a man by the name of Louie Pizza who dealt in narcotics. The agents spoke with him, they found out that Louie Pizza was Louie DeSalvatore, and then they gave him every indication that would like Mr. Pincus to go back and get in contact with Mr. DeSalvatore, which he did.

On December 7th, of 1974 Mr. Pincus went back and spoke with Mr. DeSalvatore. During this conversation Mr. Pincus indicated to Mr. DeSalvatore that he would like to get back into moving drugs, he had been away since May of 1974, he had not had any contact with Mr. DeSalvatore since May of 1974, and he would like at least to make some more money to move drugs.

Now he did not have money, he claimed, to give to or actually put up for the drugs but he could be fronted in narcotics and the money would be given

5¹ Greenidge-opening

2 up in the sales.

3 Now fronted means that he narcotics would be
4 advanced to Mr. Pincus for later sale and when the
5 sale was completed, Mr. Pincus, from the sale money
6 he received, would then give Mr. DeSalvatore the money
7 that Mr. DeSalvatore requested from the sale of the
8 narcotics.

9 On December 7, 1974, when Mr. DeSalvatore spoke
10 with Mr. Pincus, Mr. Pincus was wired with a recorder.
11 During that conversation Mr. DeSalvatore mentioned to
12 Mr. Pincus that he could supply Mr. Pincus with Merck
13 cocaine at a price of \$36,000 per kilogram and heroin
14 at a price of \$50,000 per kilogram.

15 Now Merck cocaine -- Merck is the name of a
16 pharmaceutical company -- the cocaine or coke is manu-
17 factured by the Merck company. There are two locations
18 where this cocaine is manufactured, one in California,
19 one here in New Jersey.

20 Mr. DeSalvatore said that he had this Merck
21 cocaine and that the Merck was synthetic cocaine made
22 by the Merck company here in New Jersey.

23 The heroin, DeSalvatore said at the time, was
24 capable of nine hit, that it could be cut nine times
25 and could be sold at street strength nine times less

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than the strength that he sold it to Mr. Pincus.

The conversation took about 15 minutes and Mr. Pincus left the Drift Inn and proceeded to speak with the agents.

Now prior to meeting with Mr. DeSalvatore on that day and after meeting with Mr. DeSalvatore on that day, Mr. Pincus was briefed by the agents as to just who Mr. DeSalvatore was and where the conversation was to take place. He was also searched, he was searched and before he went into his car his car was searched and he was searched after he came out and his car was searched at that time, and when he was searched he surrendered the tape which you will hear in evidence in Court during the presentation of the Government's case.

Now, on December 11, 1974 Mr. Pincus was called down to the Drift Inn to return and to speak to Mr. DeSalvatore. At the time Mr. Pincus walked into the bar it was around 7 p.m. to purchase the narcotics and he was given \$5,000 by the D.E.A. agent to advance the purchase of 1/8 of a kilogram of narcotics.

Now Mr. Pincus entered at 7 and he was under observation at this time by the agents -- excuse me, there were two meetings that day, on December 11, 1974,

7 1
2 the first meeting when Mr. Pincus entered and he was
3 given the money to hand over to Mr. DeSalvatore. At
4 this time he spoke to Mr. DeSalvatore, at 7 p.m. that
5 night about the purchase of 1/8 of a kilogram at
6 \$5000 purchase price and the money was advanced by the
7 agents. As I say, he was searched and his car was
8 seaarched and after he entered he was searched and his
9 car was searched and the body recorder was placed on
10 his person during that first meeting.

11 During that first meeting Mr. DeSalvatore
12 takes a long while to enter the bar but he does enter
13 the bar sooner or later and the conversation rolls
14 around to the purchase of cocaine.

15 Mr. DeSalvatore agreed to sell the cocaine for
16 \$5000 an ounce and Mr. Pincus said he will be return-
17 ing to the bar to purchase the cocaine.

18 (continued next page)
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2 Later on that day, at 11 or 11:30 that night,
3 Mr. Pincus does return. He had voiced some concern
4 about his own safety based upon the fact that he was
5 searched in March of 1974 for a wire, he feared that
6 when he entered the bar at this time on Coney Island
7 Avenue, the Drift Inn, he would be searched again
8 by Mr. De Salvatore, so he told the agents that he
9 thought for his own safety he should not wear the
10 recorder. But he went into the bar with \$5,000 and
11 after being searched by the agent, and that was at
12 11:30 that night, and he awaited Mr. De Salvatore to
13 come.

14 Mr. De Salvatore was not in the bar but five
15 minutes later he did enter and he was driven in a
16 car with license No. 1114KLO. Now, driving that car
17 was a man later identified as Mr. Fago, the defendant
18 seated at counsel table. Mr. Fago entered the bar
19 with Mr. De Salvatore and proceeded to the other end
20 of the bar, some 50 feet away from Mr. Pincus.
21 Mr. Pincus remained at the other end of the bar awaiting
22 Mr. De Salvatore.

23 Mr. De Salvatore proceeded to one end of the
24 bar with Mr. Fago and Mr. Fago spoke with Mr. De Salva-
25 tore out of Mr. Pincus' hearing and he then returned

2 1 to Mr. Pincus who was looking towards them.

2
3 When he walked to Mr. Pincus he said, "Do you
4 have the money?"

5 Mr. Pincus said he did and Mr. De Salvatore
6 said he had to front the money, the narcotics was not
7 there yet.

8 Mr. De Salvatore took the \$5,000 from Mr. Pincus
9 and walked directly towards Mr. Fago. With his back
10 towards Mr. Pincus, Mr. De Salvatore then reached out
11 and handed, as Mr. Pincus will testify, Mr. Fago some
12 money. Mr. Fago then spoke briefly with Mr. De Salva-
13 tore and left the bar.

14 Mr. De Salvatore left Mr. Pincus in the position
15 where he was and he then walked back over to
16 Mr. Pincus and asked him if he would like a Coke or
17 something to drink. Mr. Pincus said he would.

18 Mr. De Salvatore said, "You have to wait while
19 the drugs will be here in a second."

20 Mr. Fago left the bar and surveillance agents
21 followed him to his home at 128 28th Street, in
22 Brooklyn. He proceeded to his home directly, entered
23 his home, parked his car in the driveway of a neighbor's
24 house, entered his home, then came out and got into
25 a car, and then you will see from the agent's testimony,

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2 proceeded to drive in an erratic manner back to Drift
3 Inn. He drove in this manner, he sped up and he
4 slowed down, he speeded up his car and slowed down his
5 car and at one moment stopped abruptly, he even
6 stopped abruptly, then after he stopped abruptly he
7 remained in the car for a short while and then proceeded
8 directly to the Drift Inn.

9 When he entered the Drift Inn, Mr. De Salvatore
10 left Mr. Pincus' sight and went to Mr. Fago and said,
11 with his back still to Mr. Pincus and Mr. Pincus was
12 unable to see or hear what took place at this time,
13 but when he looked up, Mr. De Salvatore had motioned
14 to him to come towards the back stairs in the Drift
15 Inn.

16 Mr. Pincus went to the back stairs of the
17 Drift Inn and proceeded downstairs following
18 Mr. De Salvatore, Mr. De Salvatore being directly in
19 his line of sight at all times.

20 When he got to the basement, Mr. De Salvatore
21 handed Mr. Pincus at this time the amount of cocaine
22 that was purchased at this particular point in time.
23 Mr. De Salvatore indicated that he was able to do more
24 deals with Mr. Pincus if Mr. Pincus were agreeable,
25 and he helped Mr. Pincus into a back portion of the

basement where Mr. Pincus pulled out a drug tester and tested the drugs and found it to be cocaine that Mr. De Salvatore had given him and then left the bar.

Now, upon leaving the bar, Mr. Pincus was picked up by the agents of the DEA some short distance from the bar and they searched his car and after his car was searched his body was searched and he delivered to the agents at that time the narcotics he purchased for \$5,000 from Mr. De Salvatore.

Now, Mr. Pincus during this conversation with Mr. De Salvatore indicated that he could provide a substance known as mannite. Mannite is a light substance, a very light substance that is usually added to drugs, not to increase their weight but to increase their body; it is a very fluffy substance.

Mr. Pincus indicated to Mr. De Salvatore while in the basement that he could supply mannite in large quantities. Mr. De Salvatore showed some interest at this particular point in time.

Now, when Pincus left the bar, it was left up to Mr. De Salvatore to indicate whether or not he wanted the mannite.

On December 16, 1974, Mr. Pincus went back in the possession of the mannite supplied to him by the

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2 DEA agents to be sold to Mr. De Salvatore. On
3 December 16th he handed the mannite, a sample of mannite
4 to Mr. De Salvatore with the intent that if the mannite
5 proved to be satisfactory to Mr. De Salvatore a
6 sale would be forthcoming. The mannite contained a
7 trace, and the trace could have been used by the
8 agents to find out just where Mr. De Salvatore was
9 getting his drugs.

10 At this point in time, at the meeting on
11 December 16th, a meeting was set up in a future time
12 for the sale of more narcotics.

13 Now, on January 7, 1975, a second sale was set
14 up.

15 Mr. De Salvatore called Mr. Pincus at his
16 apartment in Brooklyn and indicated to Mr. Pincus that
17 if he called the C&A Market later on that afternoon,
18 a sale could be set up. The C&A Market is located
19 at 5824 Fifth Avenue, Brooklyn, New York.

20 Mr. Pincus did call the C&A Market and got in
21 touch with a man by the name of Lou who works behind
22 the counter in the market as a butcher and he then
23 finally got in touch with Mr. De Salvatore.

24 Mr. De Salvatore suggested that he come to the
25 market, that he could make up a sale that afternoon.

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2 He did, he went down to the market and Mr.
3 De Salvatore told him that he had some brown heroin
4 available.

5 Brown heroin, as Mr. Pincus will describe to
6 you, is a heroin of brownish tinge, of an inferior
7 quality to the white heroin; he could receive more
8 money for the white heroin, which he indicated to
9 Mr. De Salvatore at the time that he would rather have
10 than the brown heroin but that he would take the brown
11 heroin.

12 Mr. De Salvatore handed to Mr. Pincus a small
13 aluminum foil containing the brown heroin which he
14 had for sale and the price at that time was \$1,800
15 per ounce. He claimed that he had 6-1/2 ounces avail-
16 able for sale and that Mr. Pincus could have all that he
17 had available.

18 Now, Mr. De Salvatore at this time explained
19 to Mr. Pincus that the heroin he was supplying, the
20 brown heroin he was supplying was part of a larger
21 amount of heroin he had available for sale, that is,
22 that the six and a half ounces, of which the sample
23 he had was a part, that was the part of the six and
24 a half ounces that he had for sale but that he had
25 the rest in another place and Mr. Pincus would have

7 1 to indicate to him whether or not he wanted to buy the
2 heroin and how much he wanted to buy of the heroin.

3 A meeting was set up for later on that night at
4 which time Mr. Pincus was to go to the Drift Inn to
5 indicate to Mr. De Salvatore just how much heroin he
6 wanted to buy.

7 At 8:30 p.m. that night, Mr. Pincus went back
8 to the Drift Inn, he entered the Drift Inn and spoke
9 with Mr. De Salvatore.

10 Mr. De Salvatore tried to phone his source, as
11 he told Mr. Pincus, but was unable to get in contact
12 with it.

13 He also told him that he needed \$4,000 for the
14 sale right that moment but that the entire sale would
15 cost him \$5,400.

16 Mr. Pincus indicated he wanted at least two
17 ounces of -- excuse me, three ounces of the heroin
18 available.

19 Mr. Pincus at this time left the Drift Inn and
20 returned to the agents where he was kept under constant
21 surveillance and then in an hour's time, after he left
22 the Drift Inn, around 8:30 -- excuse me, 9:30 that
23 night, returned at around 10:30 at night with the
24 \$4,000 and spoke with Mr. De Salvatore.
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Mr. De Salvatore at this time indicated that the pass would be a car pass, this would be the type of pass where Mr. Pincus would loan his car to Mr. De Salvatore and Mr. De Salvatore would place the drugs in the car, return the key to Mr. Pincus and Mr. Pincus would ride away with the drugs in his car.

Mr. Pincus upon entering the bar was told by Mr. De Salvatore, "Give me your keys."

Mr. Pincus gave him his car keys. After that he was told by Mr. De Salvatore to go to a nearby restaurant and wait for -- to wait for Mr. De Salvatore to indicate the sale was complete.

This Mr. Pincus did, he went to the Cousins Restaurant, which is catty-corner to the Drift Inn on Coney Island Avenue, and in the Cousins Restaurant he phoned Base and told them what was happening and then returned to his position outside on the street.

Sometime after, Mr. Pincus, while waiting on the street, was approached by a man in an old Cadillac by the name of Johnny, he only knew him as Johnny, he knew he was a friend of Mr. De Salvatore and John told Mr. Pincus that this time that Mr. De Salvatore, "Wants you in the Drift Inn."

(Continued on next page.)

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2 He did, he went back to the Drift Inn, which was
3 right across the street in an angled position, he
4 went back to the Drift Inn, entered the Drift Inn,
5 and was told by Mr. DeSalvatore that his car had a
6 flat and that the person driving the car had a tough
7 time fixing the flat.

8 Mr. Pincus then engaged in some conversation
9 and he went back outside of the bar. While they were
10 talking he was told that he should leave and come back
11 again, and he went back to Covens for a short while
12 and then later on that night. When he entered the
13 bar he was motioned by Mr. DeSalvatore to enter the
14 bar and then come to a back room. As he will testify,
15 Mr. DeSalvatore was in the back room making what was
16 known as bitter spinach.

17 Now seated around the table were some individuals
18 who at this time were waiting and looking at Mr. Pincus.
19 Mr. Pincus grew a little bit leary at this time and
20 took off his coat. Contained in that coat was a Nagra
21 recorder that was recording the conversation between
22 himself and Mr. DeSalvatore. His fear was that when
23 he went into the bar, when he went into the back room
24 he was to be searched because it reminded him of a
25 similar situation in March of 1974 when he was searched

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2 in a parking lot.

3 He went into the back and received the narcotics
4 from Mr. DeSalvatore who handed it to him in a bag,
5 a plastic bag.

6 Mr. Pincus then went to the back of the bar,
7 picked up the narcotics, spoke with Mr. DeSalvatore,
8 left, then left the bar.

9 Upon leaving the bar he was searched by the
10 agents of the DEA and the narcotics were found and
11 the Nigra tape was taken from him. He was told to
12 go back home and wait for a call, any call from the
13 DEA or anybody else involved in the case. He was
14 rewarded with that call and Mr. DeSalvatore told him
15 to call the Drift Inn -- excuse me, the C & A Market
16 the next day at 4:00 p.m.

17 Mr. Pincus failed to call the market at 4:00
18 p.m. but called the Drift Inn and he spoke with a
19 barmaid who told Pincus that Mr. DeSalvatore would not
20 be there until 9:00 p.m. that night.

21 When Pincus went to the bar at 9:00 p.m. that
22 night, DeSalvatore immediately handed him a coke sample
23 that he had and which he said he could get for Mr.
24 Pincus in kilograms at \$33,000 per kilo.

25 Mr. Pincus showed a little more concern about

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2 the case because he was told that morning that the
3 heroin he had received the day before was a little
4 bit short, short an ounce, and that he wanted to
5 complete the sale of the previous day but that then
6 he would discuss the cocaine that Mr. DeSalvatore was
7 offering him. But he took the sample anyway to show
8 to his customers and he indicated that he would indeed
9 consider buying the coke, the cocaine.

10 Mr. DeSalvatore indicated to him that he would
11 make up the brown heroin that he had shorted Mr.
12 Pincus on, and Mr. Pincus also indicated that he could
13 provide him with a scale, a triple beam scale so that
14 he could weigh the heroin on to make sure that future
15 sales were of correct weight, of sufficient weight.

16 Later on that night, at 11:00 p.m., he returned
17 to the Drift Inn and he had handed over the sale --
18 excuse me, the scale and at that time when he returned,
19 Mr. DeSalvatore handed over the remaining quantity of
20 or the remaining ounce that he was supposed to buy.
21 That completed the sale of June -- excuse me, of Janu-
22 ary, January 7, 1975.

23 Mr. Pincus remained out of communication with
24 Mr. DeSalvatore until February 17, 1975 when at this
25 time Mr. DeSalvatore called him and told him to be

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2
3 ready to make a sale of cocaine -- excuse me, February
4 15, 1975 when he was told by Mr. DeSalvatore to be
5 ready to buy the cocaine that was offered on January
6 7, 1975.

7 Mr. Pincus went down to the bar and explained
8 to Mr. DeSalvatore that his heroin -- excuse me, his
9 cocaine buyer would not be in town until February 17th
10 and 18th, on a Monday and Tuesday of that next week,
11 and that the sale would have to wait that next week.

12 Now Mr. DeSalvatore indicated that he would
13 set up the sale and that the sale would be made some
14 time on the 17th or 18th of February, 1975. This,
15 Mr. DeSalvatore, indicated, would have to take place
16 somewhere close by to the Drift Inn.

17 On the 17th of February, 1975, Mr. DeSalvatore
18 called Mr. Pincus and told him to come down to the
19 Drift Inn and that the sale would be of the same
20 cocaine he offered on January 7, 1975.

21 Mr. Pincus did go down to the Drift Inn and
22 indicated that he wanted one/half kilogram of the
23 narcotics that were offered.

24 On February 18, 1975, at 5:00 p.m., Mr. Pincus
25 entered into the Drift Inn after being searched by
the agents of the DEA and after a recorder was placed

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2 upon his person by agents of the DEA.

3 When he entered the Drift Inn Mr. DeSalvatore
4 told him that he would call his source and see if the
5 deal was ready. Mr. DeSalvatore went to the phone and
6 came back and indicated to Mr. Pincus that he would have
7 to go home, the sale could not be committed at that
8 time.

9 When Mr. Pincus went home he was followed by
10 the agents who kept him under constant surveillance
11 until he entered his house. When he entered into his
12 house the agents remained in sight.

13 During this wait that night, Mr. Pincus was
14 called several times by Mr. DeSalvatore that the deal
15 would continue that night that he was still waiting
16 for the source to get the narcotics.

17 Some time towards midnight that night that
18 night a call came into Mr. Pincus by Mr. DeSalvatore
19 and Mr. Pincus was told to be ready to go down to the
20 corner of Avenue C and Ocean Parkway, Brooklyn, New
21 York to pick him up. The deal was to go down.

22 Mr. Pincus went downtown to Avenue C and Ocean
23 Parkway and waited for a short while for Mr. DeSalvatore
24 to appear. About five minutes after Mr. Pincus was
25 at the corner of Avenue C and Ocean Parkway, Mr.

DeSalvatore came up to the car and indicated to Mr. Pincus that he was lamping him, which meant that he was standing away at a distance to see if he was being followed. He also indicated to Mr. Pincus that there was a car in the area, a car with a peculiar squeaking that he thought was Mr. Pincus' car but which he noticed was being driven by another individual. He thought at this time that Mr. Pincus was being followed.

A car at that time, as you will find out, was driven by Agent Michael Gray, who was at that time on surveillance around the area following Mr. Pincus.

Mr. Pincus waited in the car and discussed for a little while about the sale. Mr. DeSalvatore got in the car and he discussed the sale. They drove around the block for a while. Each time they made a circle of the block they stopped into a pay phone which was at that corner. Mr. Pincus would stop at the corner, Mr. DeSalvatore would get out of the car, go to the pay phone, make a call and return, and each time he returned he indicated to Mr. DeSalvatore -- to, to Mr. Pincus that the sale would be completed soon, that the source had not gotten the narcotics yet.

About maybe five calls later, after the fifth time around the block, Mr. DeSalvatore gets out of the

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2 car, goes into the phone booth, makes a call and
3 indicates that it is okay, the deal will go down but
4 the money would have to be fronted.

5 Mr. DeSalvatore realized that Mr. Pincus had
6 the money in the car and that he himself would like
7 to have the money in advance of turning over the nar-
8 cotics to Mr. Pincus.

9 Mr. Pincus indicated that he would not like to
10 front the money, that his source had told him to keep
11 the money always in his possession and always in his
12 sight.

13 A little argument brewed at this particular point
14 in time and it was quickly squelched when Mr. DeSalvatore
15 indicated to him that the deal would have to go down that
16 way since he didn't want to have the drugs in his posse-
17 sion.

18 AT one point in the conversation, the conver-
19 sation went like this:

20 Mr. DeSalvatore: "What I'll do, I'll make you
21 go with somebody to pick up the package and
22 boop, you go right over there (unintelligible)
23 ... you know the guy too, when you see him I
24 know you know him. This kid, kid ... you were
25 there before."

2 Now Mr. DeSalvatore at this time had indicated
3 to Mr. Pincus that the drugs would have to come after
4 the money was handed over by Mr. Pincus to Mr. DeSalva-
5 tore, that Mr. DeSalvatore had to be away from the
6 drugs. We believe the evidence will show that in this
7 statement Mr. DeSalvatore had indicated another person,
8 a person Mr. Pincus knew would be the source of that
9 narcotics, the person who had handed the narcotics to
10 Mr. Pincus.

11 Okay.

12 Later on Mr. DeSalvatore speaking to Mr. Pincus
13 said:

14 "Ya gotta pik it up. I ain't going to be with
15 you when the package comes. I gotta meet the
16 other guy and give him his money ... same
17 difference."

18 And Mr. DeSalvatore explained to Mr. Pincus at
19 this time that he is going to take the money and deliver
20 it the moment the narcotics was delivered to Mr. Pincus
21 and went on arguing with Mr. Pincus at this time that
22 the money has to be delivered to him at this particular
23 point in time for the deal to proceed.

24 (continued next page)
25

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2 Pincus still vows some displeasure, mainly,
3 as he will testify, because he was told by the Drug
4 Enforcement Administration agents not to front the
5 money.

6 Mr. DeSalvatore returned he says:

7 "You ain't fronting the bread, you are going
8 to be picking up the package. You are not
9 fronting me the bread, the package is --"

10 And he breaks off.

11 Mr. Pincus at this time was a little bit leery
12 and he indicated to Mr. DeSalvatore that he did not
13 want the deal to go down. But Mr. DeSalvatore indicated
14 to him that Johnny is picking up the (blank) package.

15 Now the Johnny, as you will find out, is John
16 Giangrande, one of the defendants John Giangrande, also
17 known as Cheech.

18 We believe the evidence will show and you will
19 see that Mr. DeSalvatore at this time is trying to
20 reassure Mr. Pincus that a person he knows, a person
21 he knows was in possession of that narcotics.

22 Mr. Pincus said he did not want to continue
23 with the sale, but Mr. DeSalvatore still persisted and
24 said:

25 "No, no, so as he gets it he is going to tell

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2 me where to go ... He is going to be five
3 minutes from here, wherever it is. He said
4 tell him where I'm going, I said I'm going
5 right near Bobby's house which is real close
6 by and you will meet him nice, he is going to
7 have it, it ain't his man, it's my man who
8 has it."

9 At this time, or a little bit later on he
10 explains to Bobby:

11 "Believe me the cash is secure I ain't going
12 no place."

13 Mr. DeSalvatore at this time was indicating to Mr.
14 Pincus that the person in possession of the narcotics
15 was his man, not the man of the person who was selling
16 the narcotics to Mr. DeSalvatore, giving him the
17 narcotics, to Mr. DeSalvatore, to give to Mr. Pincus,
18 that the man was not his man, he was "my man" who
19 has it.

20 We believe that the evidence will show that the
21 man who delivered those narcotics was Mr. John Gian-
22 grande also known as Cheech, Mr. DeSalvatore's man.

23 After the fifth call, Mr. DeSalvatore came
24 back to the car and indicated to Mr. Pincus that the
25 sale would go down that afternoon, that Mr. Pincus

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2 was to report to the Dolly Ross Luncheonette to pick
3 up the narcotics, the man was waiting for him.

4 This Mr. Pincus did, he went down to the Dolly
5 Ross Luncheonette where there is a grate across the
6 door, he went up to the front door, always under con-
7 stant surveillance by the DEA agents, and there was
8 Mr. John Giangrande also known as Cheech, the defen-
9 dant, and Mr. John Giangrande opened the grate and let
10 Mr. Pincus in.

11 As Mr. Pincus proceeded through the door, he
12 was handed narcotics, a bag of narcotics, a bag of
13 heroin by Mr. John Giangrande.

14 Mr. Giangrande directed him to the rear portion
15 of the place where Mr. Pincus opened the packet of
16 narcotics and tested it and found it to be narcotics,
17 and he folded back up and left.

18 Of importance during this particular sale, as
19 I say, and as indicated also by Mr. DeSalvatore and
20 also by Mr. John Giangrande, Mr. Giangrande was known
21 to Mr. Pincus.

22 During the conversation with Mr. DeSalvatore,
23 during the argument, Mr. DeSalvatore said to Mr. Pincus
24 that you know him, he is the guy we had the part with
25 the marijuana sale, and this was during Mr. Pincus'

1
2 earlier days with Mr. DeSalvatore, prior to Mr. Pincus
3 going with the Government. Mr. Giangrande, as you
4 will find out from the evidence, had sold marijuana to
5 Mr. Pincus, and Mr. Giangrande at that time was
6 directed by Mr. Pincus to turn over the marijuana to
7 him, Mr. Pincus took the marijuana and did not pay
8 Mr. Giangrande for it, but during that conversation of
9 February 17, 1975 Mr. Louis DeSalvatore referred to
10 that sale, that previous sale between Mr. Giangrande
11 and Mr. Pincus to indicate to Mr. Pincus that Mr.
12 Pincus knew who Johnny was.

13 The deal went over, the narcotics were seized,
14 \$24,000 was handed over to the agents after the sale
15 went down.

16 Later on that night Mr. DeSalvatore called Mr.
17 Pincus and asked him whether or not his customers were
18 satisfied. Mr. Pincus was not alone in his apartment
19 at the time, but present with him were agents of the
20 DEA who had taken the narcotics into their possession
21 or who were also waiting for a call from base to
22 indicate that they could go back to their mr in head-
23 quarters.

24 A call came in from Mr. DeSalvatore and one of
25 the agents, Jeffrey Hall, picked up the phone and was

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2 asked by Mr. DeSalvatore for Bobby. Mr. Hall picked up
3 the phone and identified himself, he said he was Jeff
4 Hall and he then handed the phone to Bobby and then
5 Mr. DeSalvatore said, "Who was that?"

6 Mr. Pincus said, "That is my source from
7 Tennessee."

8 He said, "Are you satisfied?"

9 Mr. DeSalvatore asked, "Are you satisfied?"

10 Mr. Pincus indicated, "I am."

11 After that it was some months between that and
12 the next sale. Mr. DeSalvatore called Mr. Pincus and
13 indicated to Mr. Pincus, "You are to come down to the
14 Drift Inn immediately."

15 He went down to the Drift Inn and at this point
16 in time he was introduced to a man by the name of George
17 John Adamo. Mr. DeSalvatore was seated at the bar and
18 Mr. DeSalvatore called him over and indicated to him
19 that Mr. Adamo would not supply him with heroin and that
20 Mr. Pincus was to pay Mr. DeSalvatore \$200 per ounce
21 for the privilege of buying narcotics and selling nar-
22 cotics that were supplied by Mr. Adamo.

23 Mr. Adamo would not indicate who he was, he just
24 indicated to Mr. Pincus that his name was George, he
25 would not give his last name and he would not give his

1
2 address or tell him where he lived, he would not tell
3 him what his phone number was, and when he spoke to
4 Mr. Pincus he always spoke in a position like, "You
5 do what I tell you."

6 Mr. Pincus spoke with Mr. Adamo for some time
7 and indicated he would like to buy narcotics.

8 When the conversation was finished, Mr. DeSal-
9 vatore called Mr. Pincus over and indicated to Mr.
10 Pincus that Mr. Adamo was not a person to fool around
11 with, he was to do as Mr. Adamo directed. This Mr.
12 Pincus said he would do.

13 The next day he called the DEA and indicated
14 that he could make sales from a man by the name of
15 George John Adamo.

16 On March 16, 1975 at 7:30 in the morning, on
17 that morning Mr. Pincus was called by Mr. Adamo and
18 told to come to a location in New York where he would
19 drive around a while and have Mr. Adamo talk to him.
20 This Mr. Pincus did. He went down to the location,
21 picked up Mr. Adamo, Mr. Adamo got into his car and
22 indicated he could make sales of heroin to Mr. Pincus.

23 Mr. Pincus said he was desirous of making these
24 sales and he would provide Mr. Adamo with the money
25 after the sales were made, in other words Mr. Adamo

1
2 would have to front him the heroin.

3 He went down to the location, picked up Mr.
4 Adamo, received what was supposed to have been a
5 quarter of an ounce of heroin.

6 When he returned to his apartment, He called
7 the DEA, the DEA came over and picked up the narcotics
8 and they weighed the narcotics and found it to be one-
9 eighth of an ounce short.

10 That Monday when he went back to the Drift Inn
11 he indicated to Mr. DeSalvatore and Mr. Adamo who was
12 present there, that the narcotics was short.

13 When he entered the bar he was wired and there
14 was a conversation with Mr. Adamo and Mr. Adamo indi-
15 cated to him that even though he weighed it and found
16 it to be short, he, Mr. Adamo, indicated it was a
17 quarter of an ounce short, and that was what it was.

18 Mr. Pincus did not push the issue but indicated
19 he would like at least to have his money back and if
20 he gave him the money he would like to have more
21 narcotics.

22 Mr. Adamo made Mr. Pincus give him the money,
23 which he did, and he indicated that since it was the
24 first sale he would supply this remaining narcotics
25 that Mr. Pincus said he was owed.

Greenidge-opening

1
2 On March 18, 1975, Mr. Adamo supplied the
3 remaining narcotics and indicated he could supply more.

4 Now Mr. Adamo on March 20, 1975 transferred
5 more heroin to Mr. Pincus, but at this time he indicated
6 to Mr. Pincus he wanted more money, he wanted more
7 money.

8 Mr. Pincus takes the narcotics, which is a
9 small sample, and turns to Mr. DeSalvatore and said
10 he was unable to complete any more sales because the
11 narcotics was not, was of an impure strain and that
12 he was unable to sell it to anybody who really wanted
13 to use narcotics.

14 Mr. DeSalvatore indicated that the narcotics
15 Mr. Adamo supplied to Mr. Pincus was from a batch that
16 Mr. Adamo had gotten originally, that he had originally
17 gotten from Mr. DeSalvatore and that that was already
18 cut sufficiently enough for street strength and that
19 Mr. Adamo had already used too much cut and that he
20 had cut it another time to make it too weak for use
21 by anybody who wanted to sell it to dealers in the
22 street.

23 Mr. Pincus indicated that that would not do,
24 that he was unable to make any future sales.

25 That on March 28, 1975, Mr. DeSalvatore called

1
2 Mr. Pincus to his home, Mr. Pincus at that time went
3 to Mr. DeSalvatore's home, and as you will see it was
4 Good Friday, 1975, he went to Mr. DeSalvatore's home
5 and was met at the door by Mr. DeSalvatore in his
6 pajamas. Mr. DeSalvatore indicated to Mr. Pincus
7 that he could make sales of heroin or cocaine and
8 he supplied Mr. Pincus with samples of that heroin and
9 cocaine.

10 (continued next page)
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1 He gave Mr. Pincus the sample in a little
2 tinfoil packet, which Mr. Pincus took and went home
3 with. Mr. Pincus called base that Friday and indicated
4 to the DEA agents that he was in possession of those
5 tinfoil packets and that he would like to deliver those
6 packets to someone of authority. An agent came down
7 to his home and picked up the packets and indicated to
8 him that they would take possession of them at this
9 point, and for him to stay in his home. He did.
10 Until that Sunday morning when he was called down by
11 Mr. DeSalvatore to his home on Easter Sunday, to come
12 down and see Mr. Pincus would like to talk about future
13 sales. This Mr. Pincus did. He went to Mr. DeSalva-
14 tore's home that Easter morning and picked up the
15 narcotics that Mr. DeSalvatore said was of the same
16 batch that he had handed to Mr. Pincus that Friday
17 before.

18 Mr. Pincus took the narcotics and delivered
19 it to the DEA agents on April 6, 1975. But as you will
20 see, Mr. Pincus did at that particular time use some
21 of the narcotics supplied to him that Easter Sunday.
22 He then took it upon himself to indicate to the agents
23 on April 6, 1975, that he had used the narcotics.
24 And he turned over the remaining narcotics to the agents.
25

Greenidge-opening

That date was April 6, 1975.

On April 23th, another transaction was made by Mr. Adamo, who at this time handed over another sample of the same inferior heroin that he had handed over previously and indicated to Mr. Pincus that he would make future sales of heroin. Mr. Pincus said he would show his customers, but that he felt that they would not be interested.

Later on, May 12, 1975, Mr. Pincus was called down to the Drift Inn by Mr. DeSalvatore. And Mr. DeSalvatore indicated to Mr. Pincus that he had 600 pounds of marijuana available that he could give to Mr. Pincus. Mr. Pincus indicated he would take the sample, but he again was not interested.

All was well until July 7, 1975, when Mr. Pincus was moving out of his apartment and had all of his furnishings on the street right in front of his apartment. Mr. DeSalvatore came up to him and indicated to Mr. Pincus at that time, "What are you doing?"

Mr. Pincus, as you will see, indicated to Mr. DeSalvatore that I am moving; I am getting out of the area.

And Mr. DeSalvatore retorted, "I'm in possession of the finest heroin and coke that I have ever had,

1
2 and I'd like to sell it to you."

3 Mr. Pincus left it at that, indicating that
4 maybe future sales may be in the offering, but at this
5 time he was leaving the area. He didn't want to say
6 whether or not he would make the deal.

7 Now, members of the jury, that is the Govern-
8 ment's evidence. That's the Government's main witness
9 that it will put it on. We do have testimony from
10 Agent Grey, who surveilled Mr. Pincus during his
11 activities with Mr. DeSalvatore. We also and we hope
12 to introduce for your hearing tapes of conversations
13 between Mr. DeSalvatore and Mr. Pincus, and Mr. Gian-
14 grande and Mr. Pincus in the sale of narcotics. Also
15 Mr. Adamo and Mr. Pincus in the sale of narcotics.

16 We believe under this evidence and under the
17 instructions by the Court that you will receive at the
18 end of the case, and that you will hear the evidence,
19 and then duly deliberate and do justice in this case."

20 Thank you.

21 THE COURT: All right. At this time we are
22 going to take a ten minute adjournment. While you are
23 in the jury room, please do not discuss the case.

24 You are never to discuss this case, until it
25 is given to you for your deliberations under the

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instructions of the Court at any time with anyone on or off this jury.

The jury may go out for a ten minute adjournment.

(Whereupon, the jury retired from the courtroom.)

(Recess taken.)

MR. GREENIDGE: For the record, Mr. Gray is going to get Mr. Arone who is making a phone call.

THE COURT: That's all right.

MR. GRAY: He's making a phone call.

THE COURT: All right, thank you.

(Whereupon Mr. Arone entered the courtroom.)

THE COURT: Mr. Oltarsh and Mr. Arone

MR. OLTARSH: Yes sir.

THE COURT: In connection with the opening statement of Mr. Greenidge and at the point where he was discussing prior similar acts of Mr. DeSalvatore and other people, I believe this was in 1972, Mr. Greenidge?

MR. GREENIDGE: The prior similar acts?

THE COURT: Yes.

MR. GREENIDGE: Yes. 1971.

THE COURT: Well, unfortunately the individual about whom he was talking is not on trial.

COURT'S STATEMENT REGARDING IMPROPRIETY OF OPENING
STATEMENT AND SUBSEQUENT PROCEEDINGS

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MR. GREENIDGE: He was a co-conspirator, your Honor.

THE COURT: Prior similar acts should -- it would appear, should be strictly limited to the parties who are before the Court. And this was the way the Government opened up. And this in the Court's view appeared to be highly prejudicial and something which may not be able to be corrected with this jury. But that is the Court's position. And I just wanted to convey it to you, to the defendant's attorneys.

MR. GREENIDGE: Your Honor, it was mentioned only in conjunction with connecting the defendant -- the defendants up to Mr. DeSalvatore, and also Mr. DeSalvatore up to the conspiracy with Mr. Pincus.

THE COURT: But they were -- they were not involved in those prior similar acts in any manner.

MR. GREENIDGE: One defendant was.

THE COURT: Who?

MR. GREENIDGE: Mr. Giangrande and Mr. Cheech -- known as Cheech.

THE COURT: Did you connect him in your opening?

MR. GREENIDGE: Yes, your Honor. There was one point where I indicated that during the conversation on February 17, 1975, Mr. DeSalvatore kept saying to

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2 to Mr. Pincus, "You know the person who is involved.
3 It is a man named Johnny. You have done something
4 with him before."

5 THE COURT: The question is whether or not
6 you could properly introduce prior similar acts of
7 Mr. DeSalvatore, who is a defendant not on trial.

8 As to the conspiracy, that is something else.
9 But ~~that~~ is -- because that is a conspiracy and you
10 can bring in his actions if it's part of the con-
11 spiracy.

12 But if a prior similar act as to Mr. DeSalvatore
13 it doesn't seem that that was properly before the
14 Court at that time.

15 MR. GREENIDGE: If I could understand the Court,
16 it is because Mr. DeSalvatore is not now present on
17 trial?

18 THE COURT: He's not a defendant at this point.

19 MR. GREENIDGE: That the Government cannot use
20 the prior similar acts?

21 THE COURT: I don't see how we can.

22 MR. GREENIDGE: He is in fact a co-conspirator.
23 We have to show his part in the conspiracy.

24 THE COURT: Not -- he is a co-conspirator in
25 a conspiracy. The conspiracy is properly before the

1
2 Court, but -- he is not a defendant. And his prior
3 similar acts would not appear to me to be properly
4 part of this case.

5 Are you ready to proceed?

6 MR. ARONE: How can we proceed based on --

7 THE COURT: I don't know. You can proceed any
8 way you wish. That's up to you. Don't ask me how
9 you can proceed. I am asking you that. Are you
10 ready to proceed? I am asking you.

11 MR. ARONE: Can we have a moment to mull over
12 the question?

13 THE COURT: You can mull all you want. But
14 you see, I knew you were mulling when you went out of
15 here before. You have to tell me what you want to do.

16 (Recess taken.)

17 MR. ARONE: If Your Honor please, I would re-
18 spectfully move your Honor to declare a mistrial in
19 this case based on the fact that your Honor has just
20 indicated -- and we appreciate your Honor indicating
21 that the prior similar acts were mentioned as far as
22 DeSalvatore was concerned. And since he is no longer
23 in hte case and is no longer a defendant here, that
24 the prior similar acts mentioned by the U.S. Attorney
25 in its opening would have so prejudiced the jury

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2
3 against our two -- my defendant that I don't think he
4 could get a fair trial from this particular jury, and
5 I would therefore ask you to withdraw said juror and
6 for a declaration of a mistrial.

7 MR. OLTARSH: Well, I would join in Mr. Arone's
8 motion.

9 MR. GREENIDGE: Your Honor, if I could be
10 heard.

11 THE COURT: The Defendant Giangrande also asked
12 for a declaration of a mistrial?

13 MR. OLTARSH: Yes sir.

14 THE COURT: Is that right?

15 MR. OLTARSH: Yes sir.

16 MR. GREENIDGE: If Your Honor -- Your Honor,
17 if I could be heard on that point.

18 The Government charges a conspiracy in this
19 case against Mr. DeSalvatore, Mr. Giangrande and Mr.
20 Fago. In that conspiracy the Government starts the
21 conspiracy in December 1974 up until the date of the
22 indictment, December 1, 1975. Mr. Fago and Mr. Gian-
23 grande are named as co-conspirators entering into the
24 conspiracy -- Mr. Fago on December 11, 1974, and
25 Mr. Giangrande, at least from our evidence, in February.

THE COURT: The only thing, Mr. Greenidge, it

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2 may have been an accident on your part. But at the
3 same time it's of such a highly prejudicial nature --

4 MR. ARONE: Excuse me. I don't like to
5 interrupt your HONor, but I would ask your Honor's
6 indulgence.

7 May I withdraw this motion for a mistrial at
8 this point and ask your Honor for overnight so that I
9 can check the law. I believe that I might be doing
10 my client a terrible disservice. And since that is --

11 THE COURT: I will do that. Do you want time
12 to consider?

13 MR. ARONE: Just overnight.

14 MR. OLTARSH: Yes sir.

15 THE COURT: Do you want to check the law on
16 this?

17 MR. ARONE: That's exactly right.

18 THE COURT: Do you want to check the law on
19 this?

20 MR. OLTARSH: Yes sir.

21 THE COURT: All right. I will permit that.
22 I will permit that. And you are to return tomorrow
23 morning at 10.00 a.m. Would that be all right?

24 MR. ARONE: Yes. Sure.

25 THE COURT: Well, I will keep the jury then.

1
2 MR. ARONE: Well, yes. Until tomorrow morning.

3 THE COURT: I will keep the jury until you see
4 what you want to do.

5 MR. ARONE: Yes.

6 THE COURT: All right.

7 MR. OLTARSH: Yes sir.

8 THE COURT: All right, bring in the jury.

9 (Whereupon the jury entered the courtroom.)

10 THE COURT: Ladies and gentlemen, we have
11 run into a legal issue which has to be considered. And
12 because of that, at this time we are going to adjourn
13 this case until tomorrow.

14 Now, you are actually still on trial in this
15 case. You can leave for the day. We would like to
16 start tomorrow morning at 10:00 o'clock. While you
17 are away from the Court, please do not discuss the
18 case with anyone on or off the jury.

19 Return tomorrow so that we can start at 10:00
20 in the morning.

21 Good night. You may leave for the day. Thank
22 you.

23 (Whereupon, the jury retired from the
24 courtroom.)

25 THE COURT: All right, we will go again

1
2 tomorrow.

3 MR. OLTARSH: Thank you, your Honor.

4 THE COURT: 10:00 o'clock tomorrow morning.

5 (Whereupon, an adjournment was taken until
6 Wednesday, June 23, 1976 at 10:00 a.m.)

7 * * * * *

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK

4 -----x

5 UNITED STATES OF AMERICA, :

6 Plaintiff, :

75-CR-907

7 -against- :

8 LOUIS JAMES DE SALVATORE, :
9 ANTHONY FAGO and JOHN :
10 GIANGRANDE, :

11 Defendants. :

12 -----x

13 United States Courthouse
14 Brooklyn, New York

15 June 23, 1976
16 10:00 o'clock A.M.

17 B e f o r e :

18 HONORABLE HENRY BRAMWELL, U.S.D.J.
19
20
21
22

23 JOSEPH BARBELLA
24 OFFICIAL COURT REPORTER
25

JB/tk

laml

(The following took place in the absence of the jury.)

THE COURT: Mr. Oltarsh?

MR. OLTARSH: Yes, sir.

THE COURT: Have you had a chance to review the minutes from the record yesterday?

MR. OLTARSH: Yes, I have, your Honor.

THE COURT: And, Mr. Arone, have you also had a chance to review that?

MR. ARONE: Yes, I have.

THE COURT: Mr. Oltarsh, you were given an adjournment in order to check the law as to this particular situation. Have you checked the law?

MR. OLTARSH: Yes, sir. In my opinion, I have.

THE COURT: Now, the Court was the one that brought this to your attention. Now, will you please tell the Court whether you agree or don't agree. And if you don't find it to be prejudicial, will you state for the record why it is not prejudicial.

MR. OLTARSH: Well, if your Honor please, you will recall that Mr. Arone had at the conclusion of yesterday's session withdrawn --

THE COURT: No. I am not going into that. I want you to go into the law. I want you to explain the results of your research. And if you tell me it is

1 not prejudicial, I want you to state for the record why
2 it is not.

3 MR. OLTARSH: Well, from the defendant Giangrande's
4 point of view, your Honor, I feel that the statement --
5 the opening statement of Mr. Greenidge was highly pre-
6 judicial -- extremely prejudicial, and in all probability,
7 in my humble opinion, would prevent the defendant
8 Giangrande from receiving a fair trial. I don't think
9 that the error --

10 THE COURT: then you are agreeing with the Court.

11 MR. OLTARSH: I am. Well, I am agreeing with
12 the Court one hundred per cent only to the extent that
13 the defendant Giangrande does not move for a mistrial.

14 THE COURT: You moved for a mistrial yesterday.

15 MR. OLTARSH: No. that was withdrawn.

16 THE COURT: When was it withdrawn?

17 MR. OLTARSH: It was withdrawn at the conclusion
18 of the testimony or the --

19 THE COURT: Even though it's prejudicial?

20 MR. OLTARSH: Yes.

21 THE COURT: You don't care?

22 MR. OLTARSH: I do care, but I don't -- I
23 respectfully submit that this jury was drawn and had
24 been stated as to the defendant Giangrande to be a
25 satisfactory jury. It is my respectful opinion that

1 under the decision of the United States against Jorn,
2 the most recent United States Supreme Court decision,
3 400 U.S. 470, decided 1971, that Mr. Giangrande was
4 entitled to be tried by a jury and a form of his accept-
5 ance. I submit that the Prosecution has so prejudiced
6 and so disturbed that right of Mr. Giangrande to have
7 a fair trial. I am not moving for a mistrial because of
8 action of the Prosecutor. This is not something that
9 was commenced or put in motion by the defendant. It
10 was put in motion by the Prosecution. And I submit it
11 is not --

12 THE COURT: When it was put in motion you sat
13 there and you didn't even know it was in motion.

14 MR. OLTARSH: I knew it was in motion. I didn't
15 say anything. I knew it was in motion.

16 THE COURT: And you knew it was highly prejudicial?

17 MR. OLTARSH: That's right.

18 THE COURT: And you said nothing.

19 MR. OLTARSH: At that time I said nothing.

20 THE COURT: And did you -- even when it was first
21 brought to your attention by the Court --

22 MR. OLTARSH: May I say that the record will
23 reveal that I strenuously argued originally out of the
24 presence of the jury against the admission of prior
25 similar acts. And your Honor overruled me. So that

1 your Honor made the original determination.

2 THE COURT: Yes. But the defendant about whom
3 the Prosecution was talking was not a party to the
4 proceeding at the time you were -- that this was brought
5 up in Court.

6 MR. OLTARSH: There's no question about that.

7 THE COURT: And is that prejudicial or is it not?

8 MR. OLTARSH: From my way of thinking, it is
9 highly prejudicial. But I nevertheless submit that
10 because it was brought about by the Prosecution, it is
11 not incumbent upon this defendant to move for a mistrial.
12 I in the alternative would move for a dismissal of the
13 indictment on the grounds that this defendant is entitled
14 to be tried by a jury of his selection and his accept-
15 ance.

16 THE COURT: And do you now feel that this jury
17 is tainted?

18 MR. OLTARSH: I feel that this jury is tainted
19 by acts of the Prosecution.

20 THE COURT: By what the Prosecution did?

21 MR. OLTARSH: Yes.

22 THE COURT: Okay. That's enough.

23 I will hear Mr. Arone.

24 MR. ARONE: If your Honor please, I first have
25 to compliment and thank your Honor for pointing out what

1 you did to us. I don't think that the defense had
2 noticed in Mr. Greenidge's opening that he had included
3 the prior similar acts as against Salvatore after he
4 had gotten out of the case. I don't think that was part
5 of our knowledge at that time. And I appreciate your
6 protecting my defendant in the manner that you did.

7 I would respectfully state from that point for-
8 ward, your Honor, that since I think the Federal law is
9 that once a jury is impanelled, jeopardy attaches; that
10 thereafter if these statements that were made by Mr.
11 Greenidge were so prejudicial that we could not get a
12 fair trial from this jury --

13 THE COURT: Do you feel that way? I say, do
14 you feel that way?

15 MR. ARONE: In retrospect, after your Honor
16 pointed them out, I must agree with your Honor's state-
17 ment. And after learning of the fact that -- to tell
18 you the truth, I was copying down notes on what Mr.
19 Greenidge was saying and evidently that portion that
20 your Honor pointed out to us -- because I was taking
21 notes on how to answer him in my opening -- but, in
22 any event, the point is that now the damage has been
23 done. Since it has been done, I don't think any posi-
24 tion on our part could correct it. If we were to ask
25 for a mistrial at this point, I think I would be preju-

1 dicinig my client's right to have this case dismissed
2 based on the fact that jeopardy has attached by the fact
3 that the jury was impanelled and thereafter these pre-
4 judicial remarks were made, and I think based on the
5 statements your Honor made can tantamount to your Honor
6 declaring a mistrial yesterday, and I believe if that be
7 the case, United States against Jorn makes mention --

8 THE COURT: Of course, yesterday both of the
9 defendants asked for a mistrial, is that correct?

10 MR. ARONE: Yes. without thinking.

11 THE COURT: Mr. Oltarsh, did you not ask for a
12 mistrial yesterday?

13 MR. ARONE: Yes, each one.

14 MR. OLTARSH: If your Honor please --

15 THE COURT: Did you not ask for a mistrial
16 yesterday?

17 MR. OLTARSH: Well, I -- I joined.

18 THE COURT: You know --

19 MR. OLTARSH: Wait a second. I joined with Mr.
20 Arone's request.

21 THE COURT: And when you joined, I specifically
22 asked you, if in behalf of the defendant Giangrande if
23 that was your application, and what was your answer?

24 MR. OLTARSH: My answer was in the affirmative.

25 THE COURT: Definitely in the affirmative.

1 MR. OLTARSH: Yes.

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2 THE COURT: It took you a long time to get it
3 out, but you finally made it.

4 MR. OLTARSH: Yes, but --

5 THE COURT: Now you are with us.

6 MR. OLTARSH: But we withdrew that motion and
7 your Honor granted that motion. We read the testimony
8 this morning. Your Honor definitely acceded to our
9 request to withdraw that motion pending our research
10 on the law and --

11 THE COURT: In fact, what actually happened,
12 the Court brought it up. You thought about it. You
13 made a motion for a mistrial. And now you want to
14 withdraw it. This is what happened.

15 MR. OLTARSH: No, no. We did withdraw it and
16 your Honor --

17 THE COURT: Yes. I am not saying you didn't.
18 But the Court -- the Court was the one that initiated
19 it. Then it became apparent to you. And after that
20 you made a motion for a mistrial. And you are with-
21 drawing it, or that is your intention.

22 MR. OLTARSH: when we withdrew it yesterday --
23 it is on the record. It is not a question --

24 THE COURT: Well, if I hadn't brought it up with
25 all the prejudice, you might have sat there and this

1 case would have continued and we would be in worse shape.

2 MR. OLTARSH: Well, you mean the Prosecution would
3 be in worse shape.

4 Let me say this, your Honor. I am not -- I
5 agree with your Honor one hundred per cent. There is no
6 question in my mind that your Honor is the one that
7 brought up the point of the highly prejudicial nature
8 of the prosecutor's opening statement in mentioning the
9 prior similar acts of Louis DeSalvatore. There is no
10 question about it.

11 THE COURT: You didn't think about it before I
12 brought it up.

13 MR. OLTARSH: I thought about it a lot. But I
14 didn't think about it in the light that your Honor did.
15 I will concede that.

16 THE COURT: In fact, when the Prosecutor was
17 finished with his opening, I declared an adjournment.
18 I expected at that point I would have heard from you.
19 But you, Mr. Arone, and both defendants walked out of
20 the court and I sat here and watched you and you said
21 nothing. And it was only after the adjournment when I
22 came back and I brought it up, and then it became an
23 issue.

24 MR. OLTARSH: Well, I agree with that. But
25 nevertheless, it is an issue regardless of who brought

1 it up. I don't disagree with your Honor for a moment.

2 THE COURT: Well, I think I will take care of it
3 now.

4 Anything you wish to say, Mr. Greenidge?

5 MR. GREENIDGE: Yes, your Honor. I submitted a
6 memo.

7 THE COURT: And the Court has considered the
8 memo in light of the issue that is before the Court at
9 this time.

10 MR. GREENIDGE: Yes, your Honor. And in my memo
11 I think I pointed to the fact that the conspiracy is
12 charged here, and that the prior similar acts of Mr.
13 DeSalvatore become probative of the beginning and the
14 development of the conspiracy itself. And the attach-
15 ment of certain persons to that conspiracy. And I
16 would submit on the memo I have handed to the Court --

17 THE COURT: The Court feels it is prejudicial
18 because Mr. DeSalvatore was not on trial at the time
19 that was made. Of course, it's clear that the state-
20 ments made by Mr. Greenidge were inadvertant and there
21 was no intent on the part of the Prosecutor to create
22 or to make an error. But the Court has considered this
23 and has also considered a case, Gorey against the United
24 States, which is found in 367 U.S. 371, and at page 1526
25 of that opinion it says:

1 "where, for reasons being compelling by the trial
2 judge, who is thus situated intelligently to make such
3 a decision, the ends of substantial justice cannot be
4 attained without discontinuing the trial, a mistrial
5 may be declared without the defendant's consent and even
6 over his objection, and he may be retried consistently
7 with the Fifth Amendment."

8 And it further says:

9 "Suffice that we are unwilling, where it clearly
10 appears that a mistrial has been granted in the sole
11 interest of the defendant, to hold that its necessary
12 consequence is to bar all retrial."

13 Well, because of manifest necessity and in the
14 interest of justice, a mistrial is declared by the Court
15 as to this proceeding.

16 MR. GREENIDGE: Is that with prejudice, your
17 Honor, or without prejudice?

18 THE COURT: That's without prejudice. That's
19 without prejudice.

20 And the case will be put down for retrial
21 promptly. I am going to get a fresh jury. July 6th
22 to select a jury in this case.

23 MR. OLTARSH: Well, if your Honor please, may I
24 just be heard?

25 Technically, there is something in United States

1 against Jorn where I would techically move for a dismis-
2 sal of the indictment against Mr. Giangrande on the
3 grounds that jeopardy has attached; and prior to the
4 selecting of any second jury, on the grounds that it
5 was an abuse of discretion of your Honor, respectfully
6 -- I respectfully say that.

7 THE COURT: Yes. Abuse of discretion which you
8 didn't even know what was going on.

9 (continued next page)

DISTRICT COURT'S DENIAL OF DEFENDANT GIANGRANDE'S
MOTION TO DISMISS INDICTMENT ON GROUND OF
DOUBLE JEOPARDY

92

1 MR. OLTARSH: But it went on.

2 THE COURT: It went on.

3 MR. OLTARSH: I therefore --

4 THE COURT: Well, I mean your short-comings
5 shouldn't be a problem to the Court.

6 MR. OLTARSH: Well, I take issue with your
7 Honor only to the extent that it was a tactical
8 awareness on my part of the overreaching statements
9 of Mr. Greenidge.

10 THE COURT: The Court has to disagree with you
11 because it was not a tactical awareness. It was a
12 complete and absolute unawareness. That is what the
13 Court saw in your actions. Complete and absolute
14 unawareness.

15 MR. OLTARSH: Well, notwithstanding that, I
16 nevertheless technically and respectfully move for
17 a dismissal of the indictment against Mr. Giangrande
18 on the grounds that jeopardy has attached, and prior
19 to the selection of any second jury, I move to dismiss
20 the indictment as against him on the grounds that it
21 is double jeopardy under his rights under the Fifth
22 Amendment.

23 THE COURT: That application is denied.

24 MR. OLTARSH: Thank you, sir.

25 THE COURT: Do you want to do anything, Mr. Arone?

2

1

MR. ARONE: On what?

2

THE COURT: At this time do you want to make any motions?

3

4

MR. ARONE: No. I mentioned before that I thought that --

5

6

THE COURT: All right.

7

MR. ARONE: That everything had been done that had to be done.

8

9

THE COURT: All right. Now, this case will be tried on July 6th.

10

11

Mr. Oltarsh, do you have anything to say?

12

MR. OLTARSH: With that date, no, sir. That's satisfactory.

13

14

THE COURT: Mr. Arone?

15

MR. ARONE: Just if we could start at 11.

16

THE COURT: That will be all right. Now, each of you may come up here and I will give each of you a certificate of engagement.

17

18

19

MR. OLTARSH: Thank you, sir.

20

THE COURT: One for Mr. Oltarsh and one for Mr. Arone.

21

22

MR. OLTARSH: Yes, sir.

23

THE COURT: All right, bring in the jury.

24

(Whereupon, the jury entered the courtroom.)

THE COURT: Ladies and gentlemen, I regret very

3 1 much to inform you that the Court has had to declare
2 a mistrial in the case. There was a legal problem
3 which arose and it was highly prejudicial. So because
4 of this, a mistrial has been granted.

5 So at this time you are going to be discharged
6 with the thanks of the Court. I would imagine you can
7 go to lunch at this time and after lunch return to
8 Central Jury Room on the first floor.

9 THE CLERK: Will you have them report downstairs,
10 first.

11 THE COURT: All right. Report downstairs, first.
12 Report to the Central Jury Room on the first floor,
13 first.

14 Thank you. And have a nice day.

15 (Whereupon, the jury retired from the courtroom.)

16 MR. ARONE: Might I, just to protect the
17 record, join in Mr. Oltarsh's motion for the dismissal
18 for my client, Anthony Fago?

19 THE COURT: All right.

20 MR. ARONE: I will brief it before the next
21 trial starts if I have anything more to say.

22 THE COURT: Surely.

23 The application is denied.

24 Thank you.

25 MR. ARONE: Thank you, your Honor.

* * *